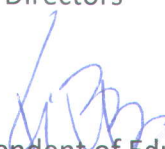


July 31, 2009

(X) ACTION REQUIRED
() INFORMATIONAL

TO: Chancellor, District of Columbia Public Schools (DCPS)
Public Charter School Board
Public Charter School Directors
Principals, DCPS

FROM: Kerri L. Briggs, PhD 
Acting State Superintendent of Education

RE: Related Services

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This Memorandum serves to clarify the expectation of the Office of the State Superintendent of Education (OSSE) regarding related service provision requirements as outlined in the Individuals with Disabilities Education Act (IDEA) 2004 and Title 5, Chapter 30 of the District of Columbia Municipal Regulations (DCMR). Local Education Agencies (LEAs) must provide related services to all eligible students with disabilities when such services are required in order for a child with a disability to benefit from special education. This Memorandum supersedes all previous policy, memoranda and/or guidance promulgated by the state education agency. This policy will become effective on or around October, 2009.

Background

It is the responsibility of the OSSE, as the State Education Agency (SEA), to ensure that all children within the District of Columbia receive a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). As defined in the IDEA, FAPE includes both special education and related services and must be provided to each child with a disability in accordance with the child's Individualized Education Program (IEP) at no cost to the parent.¹

In order to be eligible for the receipt of related services under the IDEA, a child must be identified as a child with a disability and the IEP team must determine that the related service(s) are required to assist the child with a disability to benefit from special education.² To be appropriate, related services must be designed to meet his/her individual needs. Each child's IEP must include a statement of the special education, related services, and supplementary aids and services to be provided to the child, or on behalf of the child. In order to address the educational needs of the child, the IEP must also contain a statement of the program modifications or supports for school personnel that will enable the child to advance toward attaining the annual goals, be involved in and make progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and be educated and participate with his/her non-disabled peers.³

The implementation of appropriate related services is one of many LEA responsibilities in providing FAPE. The District of Columbia Municipal Regulations (DCMR) specifies that LEAs are also accountable for other responsibilities such as conducting child find activities, evaluating students, developing IEPs, and providing the full continuum of service that ensures special education and related service needs of each child with a disability are provided in the LRE.⁴ The OSSE expects LEAs to comply fully with all local and federal law in designating and implementing related services

Key Terms

The key terms outlined below have specific meanings assigned by IDEA (34 C.F.R §300.34), and/or DCMR 5-3001. This is not an exhaustive list of the developmental, corrective and supportive services that a child with disabilities may require. However, to provide clarity on typical types of related services, definitions are provided below.

¹ 34 C.F.R. §300.17

² 34 C.F.R. §300.34

³ 34 C.F.R. §300.320(a)(4)

⁴ 34 C.F.R. Part §300

- *Audiology.* Audiology services include: (a) the identification of children with hearing loss; Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; (b) provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; (c) creation and administration of programs for prevention of hearing loss; (d) counseling and guidance of children, parents, and teachers regarding hearing loss; and (e) determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- *Counseling/Behavioral Supports services.* Counseling/Behavioral Support services include supportive therapeutic services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel to improve a child's social-emotional, interpersonal, and academic functioning.
- *Early identification and assessment of disabilities in children.* Early identification and assessment refers to the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- *Interpreting services.* When used with respect to children who are deaf or hard of hearing, interpreting services include: (a) oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and (b) special interpreting services for children who are deaf-blind.
- *Medical services.* This service is for the LEA to review diagnostic or evaluation provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- *Occupational therapy.* Occupational therapy are services provided by a qualified occupational therapist that includes: (a) improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; (b) improving ability to perform tasks for independent functioning if functions are impaired or lost; and (c) preventing, through early intervention, initial or further impairment or loss of function.

- Orientation and mobility. Orientation and mobility services are services: (a) provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and (b) which include teaching children in the following, as appropriate:
 - (i) spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
 - (ii) to use a long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
 - (iii) to understand and use remaining vision and distance low vision aids; and
 - (iv) other concepts, techniques, and tools.
- Parent counseling and training. Parent counseling and training includes: (a) assisting parents in understanding the special needs of their child, (b) providing parents with information about child development, and (c) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- Physical therapy. Physical therapy is service provided by a qualified physical therapist to increase mobility, dexterity, and overall range of physical movement/functioning.
- Psychological/Behavioral Support services. Psychological/Behavioral Support services are services that may include: (a) administering psychological and educational tests and other assessment procedures; (b) interpreting assessment results; (b) obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; (c) consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; (d) planning and managing a program of psychological services, including psychological counseling for children and parents; and

(e) assisting in developing positive behavioral intervention strategies.

- Recreation. Recreating services are services that may include: (a) assessment of leisure function; (b) therapeutic recreation services; (c) recreation programs in schools and community agencies; and (d) leisure education.
- Rehabilitation counseling. Rehabilitation counseling services are services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, independence, and integration in the workplace and community for a child with a disability.⁵
- School health and school nurse services. These services are health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person as defined by the LEA.
- Social work/Behavioral Support services. Social work/Behavioral Support services in schools include: (a) preparing a social or developmental history on a child with a disability; (b) group and individual counseling with the child and family; (c) working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; (d) mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and (e) assisting in developing positive behavioral intervention strategies.
- Speech-language pathology services. Speech-language services include: (a) identification of children with speech or language impairments; (b) diagnosis and appraisal of specific speech or language impairments; (c) referral for medical or other professional attention necessary for the habilitation of speech or language impairments; (d) provision of speech and language services for the habilitation or prevention of communicative impairments; and (e) counseling and guidance of parents, children, and teachers

⁵ 34 C.F.R. §300.34(c)(12); The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

regarding speech and language impairments.

- Transportation. Transportation includes: (a) travel to and from school and between schools; (b) travel in and around school buildings, and (iii) specialized equipment (such as special or adapted buses, lifts, and ramps), as required to for a child with a disability.

Transportation

IDEA defines transportation as: (a) travel to and from school and between schools, (b) travel in and around school buildings, and (c) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.⁶ Not all children with disabilities are eligible to receive transportation as a related service. Transportation is a related service when it is needed in order for the child to benefit from special education. If transportation to and from school for the general student population is provided, then it must provide transportation for a child with a disability in order to not discriminate against the child with a disability. If transportation to and from school for the general student population is provided, then transportation must be provided for a child with a disability in order to not discriminate against the child with a disability. If transportation is not provided for the general student population, then the issue of transportation for children with disabilities must be decided on a case-by-case basis by the IEP team.⁷

If the IEP team determines that transportation services are necessary, a statement to that effect must be included in the IEP, along with relevant details and arrangements. Additionally, if the team determines that the parent will provide transportation, that determination, as well as the specific arrangements, should also be indicated on the IEP to ensure that it is at no cost to the parent if it is a related service.

Speech-Language

A child with a disability does not need to be identified or diagnosed as having speech and/or language disorders in order to receive speech-language therapy as a related service. Any child eligible for special education may receive speech-language therapy if the IEP team formally determines that the child requires the related service of speech-language services in order to benefit from special education.⁸

⁶ 34 C.F.R. §300.34(c)(16)

⁷ 34 C.F.R. §300.320(a)(4)

⁸ 34 C.F.R. §300.39(a)(2)(i)

Speech-Language as Specially Designed Instruction. Consistent with 34 C.F.R. §300.8, a child must meet a two-pronged test to be considered a child with a disability: (1) have one of the specified disabilities; and (2) because of the disabilities, needs special education and related services. Children age three through seven experiencing developmental delays may also be considered a child with a disability and therefore access special education and related services.⁹ If a child has one of the disabilities, but needs only related services and does not need special education, the child is not a child with a disability.¹⁰ However, in the District of Columbia, speech-language may be categorized as special education instead of a related service if it is specially designed instruction to meet the unique needs of the child with a disability.¹¹ Thus, the child would be considered to be a child with a disability if the child has one of the specified disabilities of Speech-Language impairment, because of that disability, needs the specially designed instruction of speech-language services. An IEP with only speech and language as special education is appropriate if speech-language services are the only specially designed instruction needed.

Exception to Related Services

Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. However, nothing in this exception limits the right of a child with a surgically implanted device to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE; limits the responsibility of LEAs to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly.¹²

Eligibility for Related Services

To be eligible for related services, a child must meet a two-pronged test to be considered a child with a disability: (1) have one of the specified disabilities; and (2) because of the disability, need special education and related services. The related service must also be required in order to assist a child with a disability to benefit from special education.

⁹ 34 C.F.R. §300.39(a)(2)(i), DCMR 3001

¹⁰ 34 C.F.R. §300.8(a)(2)(ii)

¹¹ 34 C.F.R. §300.39(a)(2)(i); DCMR 3001.1

¹² 34 C.F.R. §300.34(b)

Additionally, a child can be found eligible for special education and related services if he or she is evaluated and determined to have a developmental delay. The District of Columbia has adopted the term developmental delay to apply to a child aged 3 through 7 who (a) experiences severe developmental delays of at least two years below his or her chronological age and/or at least two standard deviations below the mean, as measured by appropriate standardized diagnostic instruments and procedures, in one or more of the following areas: 1) physical development, 2) language and communication development, 3) social or emotional development, 4) cognitive development, or 5) adaptive development, and due to the delay(s) described above, requires special education and related services.¹³

Designation of Related Services

The designation of related services must be based on current data which indicate that the services are required to ensure that the child with a disability will benefit from special education. As such, the related service must relate to the child's educational needs and annual goals. The IEP team must specify in the statement of the related service(s):

- The projected date that the related service(s) will begin;
- The anticipated frequency and duration of the related service(s); and
- Where the related service(s) will be provided.¹⁴

When determining appropriate related services, the IEP team should consult a related service provider who can speak to the educational impact that the addition or reduction of related services will likely have on the child's progress and the ultimate achievement of FAPE. The IEP team members should regard educational impact as not only academic achievement but also functional performance such as social interactions, emotional development, communication, behavior.

Procedures Regarding Missed Related Services

LEAs are required to provide related services in a manner consistent with the frequency, location, and duration of related services as specified in a child's IEP. LEAs are responsible for ensuring that service providers implement and document all instances of actual and attempted

¹³DCMR: Title 5, Chapter 30, Section 3001.1. No child shall be classified as having "Developmental Delay" based solely on deficits in the area of social and/or emotional development. "Developmental Delay" does not apply to children with the following disabilities: (a) autism; (b) traumatic brain injury; (c) mental retardation; (d) emotional disturbance; (e) other health impairment; (f) orthopedic impairment; (g) visual impairment, including blindness; (h) hearing impairment, including deafness; or (i) speech/language impairment

¹⁴ 34 C.F.R. §300.30(a)(7)

service delivery.¹⁵ The occasional missed related service sessions may be unavoidable; the LEA must consider the impact of the missed session on the child's progress and performance and ways to ensure the continued provision of FAPE. When related services are missed due to a provider's absence, the LEA must have a plan for ensuring that a substitute provider will be available or that the missed related service session will be rescheduled and implemented by the regular provider at a later time. Extended absence on the part of a related service provider is unacceptable.

Whether an interruption in service constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis. The LEA should consider the impact of a provider's absence or a child's absence on the child's progress and performance and determine how to ensure the continued provision of FAPE in order for the child to progress and meet the annual goals in his or her IEP.¹⁶ If the LEA believes that missed session(s) may be deemed a denial of FAPE, the LEA must ensure that the service provider reschedules a make-up session in the timeliest manner possible in order for the child to continue to progress and meet the annual goals in his or her IEP. When the child is absent for an extended amount of time (i.e. truancy) or there is a pattern of repeated absences, the LEA must review the child's IEP and make changes as appropriate to ensure the child is provided a FAPE.

Under no circumstances should a LEA cease service provision. Related services must remain available and accessible on-site as specified by the IEP regardless of the frequency or cause of missed sessions; even when student absence occurs more than occasionally or is predictable. In addition, the provision of a related service to a child with disabilities who is subject to discipline must be in accordance with the IDEA¹⁷.

LEAs should consult with the parent(s) when a child repeatedly misses related service provision due to frequent/chronic absences or student/parent refusal of services. Any change in the provision of a related service to a child with disabilities is a change in the IEP and it may only be done in accordance with the revision/amendment provisions in the IDEA.

¹⁵ 34 C.F.R. §300.154(b)(2) ("if a public agency other than an educational agency fails to provide or pay for the special education and related services... the LEA... shall provide or pay for these services to the child in a timely manner.")

¹⁶ Guidance document from OSEP: Letter to Clarke, march 8, 2007 (48 IDELR 77)

¹⁷ 34 C.F.R. §300.530(d)

Due Diligence and IEP Amendment

LEAs must demonstrate their due diligence in providing related services to each child according to his or her IEP. To demonstrate due diligence, LEAs must maintain and provide accurate and clear documentation of all instances of attempted service provision, this includes the date, time, and explanation (*Procedures Regarding Missed Related Services* section) behind each missed session.

If a child's interests are potentially best served through amending the existing IEP, then team members can convene an IEP team meeting in a timely manner or, when appropriate, utilize the IEP amendment process to consider and/or make changes to existing services, the frequency of those services, or the location or provider of those services. Prior to meeting, the LEA must follow the parent participation requirements in the IDEA for IEP meetings, including issuing the meeting notice or, if applicable, obtaining the agreement of the parent(s) not to convene the IEP team meeting for the purposes of amending the IEP.¹⁸

Additional Guidance

Please direct any questions regarding the content of this Guidance to **Grace Chien, LEA/Charter Policy and Implementation Specialist**, at **(202) 741-5098** or by email at **Grace.Chien@dc.gov** or **osse.publiccomment@dc.gov**. The OSSE has the authority as the state education agency (SEA) to issue additional guidance regarding LEA/charter policy and related practice implementation to ensure that all LEAs are complying with the law in providing related services to students with disabilities in the District of Columbia.

¹⁸ 34 C.F.R. §§300.322 and 300.324(a)(4)